

FOSTER PARENT LIABILITY PROGRAM

I. THE PROGRAM

The following provisions set forth the exclusive terms and conditions of the State of New Jersey's Foster Parent Liability Program (hereinafter referred to as the "Program"). The Program is contractual in nature and is intended to recognize, to the extent feasible in light of ongoing budgetary restrictions, the important public function performed by foster parents. See generally, N.J.S.A. 30:4C-27, 30:4C-29. The Program shall be administered and/or financed by the New Jersey Department of Human Services, Child Protection and Permanency, the New Jersey Department of Treasury, Bureau of Risk Management and the New Jersey Department of Law and Public Safety, Division of Law (collectively, the "State").

A. HISTORY OF THE PROGRAM

In the past, the State purchased policies of insurance providing partial liability coverage to foster parents with respect to damages or losses to property negligently caused by their foster children, as well as claims brought against foster parents by third parties based upon their foster parenting activities. This approach was cost-prohibitive. Thereafter, the State established a contractual version of the liability program for foster parents as part of its continuing efforts to assist foster parents unable to obtain their own insurance policies. This contract sets forth the exclusive provisions of the Program and supersedes any and all prior versions of the Program.

B. SCOPE OF THE PROGRAM

While this program seeks to protect the interest of the foster parent, it must be done with a recognition of the financial burdens placed on the state's coffer's. The program provides coverage only when there is no applicable insurance. The terms of this program must be interpreted consistent with this public policy consideration.

The Program consists of two distinct components involving: (1) property damage/loss; and (2) legal representation. Any person who is certified/licensed as a foster parent by the Division

of Youth & Family Services ("CP&P"), or who was approved as a foster parent by CP&P prior to January 2002, and who is acting in the capacity of a foster parent at the time of a qualifying occurrence, may be eligible for coverage under the Program. Foster parents are not employees of the State.

The burden of demonstrating eligibility for coverage and/or representation under the Program in any particular case shall be upon the foster parent claiming coverage. A claim against one or more foster parents occupying the same household will be considered a single claim for purposes of the Program.

While the Program in many ways resembles the insurance policies previously purchased for foster parents, it is not a policy of insurance. Rather, any and all benefits afforded under the Program are provided by the State as a maintenance cost reimbursement pursuant to N.J.S.A. 30:4C-27 and 30:4C-29. The Program shall not be considered insurance under any statute, or under the terms of any insurance policy, case law, or for any other reason.

Nothing contained in the program shall inure to the benefit of any insurance company which has issued a policy of liability insurance or to any person who is obligated to indemnify a public entity.

II. COVERAGE UNDER THE PROGRAM

Subject to the limitations and exclusions set forth herein, the Program is intended to provide, without expense to a foster parent, protection against certain:

- (A) damages or losses to a foster parent's property caused by a foster child;
- (B) claims made by third parties against a foster parent's because of the acts of a foster child; and
- (C) claims made against a foster parent by third parties, including foster children or persons acting on their behalf, alleging negligence on the part of the foster

parents in the course of their foster parenting activities.

The Program is also intended to afford legal representation to foster parents in certain types of civil litigation brought against them alleging property damage or lost caused by an act or omission arising out of a foster parent's activities in the course of caring for a foster child, in accordance with the agreement between Child Protection and Permanency and the foster parent. (See CONDUCT OF LITIGATION, infra). The Program does not provide legal representation in criminal matters, including municipal court matters.

More specifically, subject to the limitations, exclusions and responsibilities described herein, coverage under the Program shall be as follows:

A. DAMAGE TO PERSONAL PROPERTY OF FOSTER PARENT

The Program covers valid claims for damage/loss to a foster parent's personal property having a minimum value of \$75.00 proximately caused by a foster child and occurring while the child is in the care of the foster parent. The Program's coverage with respect to a foster parent's damaged personal property having a value between \$75.00 and \$350.00 is primary.

The Program's coverage with respect to a foster parent's personal property damage claim in excess of \$350.00 is secondary. (See PRIMARY AND SECONDARY COVERAGE, infra).

B. DAMAGE TO DWELLING OF FOSTER PARENT

Where a foster child in the care of a foster parent causes damage to the residence of the foster parent, whether by fire or other catastrophic act, such that the residence or any part of it is rendered uninhabitable, the per claim and per year limitations upon coverage under the Program, as set forth herein, shall be \$100,000 for such damage. (See LIMITS OF COVERAGE UNDER THE PROGRAM, infra). Coverage under the Program shall be secondary to any policy of insurance responsible to provide such coverage. (See PRIMARY AND SECONDARY COVERAGE, infra).

C. THIRD-PARTY LIABILITY CLAIMS

The Program covers valid claims for damage to the property of a third party proximately caused by a foster child and occurring while the child is in the care of the foster parent. Coverage under the Program shall be secondary to any policy of insurance responsible to provide such coverage. (See PRIMARY AND SECONDARY COVERAGE, infra).

III. PRIMARY AND SECONDARY COVERAGE UNDER THE PROGRAM

Coverage under the Program may be either primary or secondary, depending upon the type of claim presented by the foster parent.

A. PRIMARY COVERAGE

Primary coverage means that the Program will pay valid claims notwithstanding the existence of private insurance. For example, the Program's coverage with respect to a foster parent's damaged personal property having a value of between \$75.00 and \$350.00 is primary.

B. SECONDARY COVERAGE

Secondary coverage means that the Program will not pay any claim as to which there exists private insurance coverage of any kind. For example, the Program's coverage with respect to a foster parent's personal property damage claims in excess of \$350.00, or with respect to claims made by third parties against a foster parent, is secondary. This means that a foster parent must submit a claim to his or her own insurance if any, before seeking coverage under the Program. (NOTE: When private insurance pays for a property damage or property loss claim for a property damage or property loss claim, a foster parent may submit a claim to the Program in the amount of the deductible).

C. LEGAL REPRESENTATION

With regard to legal representation, the State's provision of legal representation to qualifying foster parents under the Program is secondary. This means that the State will not defend, indemnify or provide legal representation to a foster parent to the extent that the foster parent is protected by any provision of any policy of insurance.

IV. LIMITS OF COVERAGE UNDER THE PROGRAM

The Program's per claim and per year monetary limitations shall be as follows:

A. DAMAGE TO PERSONAL PROPERTY OF FOSTER PARENT

Primary Coverage for Single Claim(s)	-- \$75.00-\$350.00
Secondary Coverage for Single Claim(s)	-- over \$350.00
Limit for Any Single Claim	-- \$25,000.00
Limit for Calendar Year (Jan. - Dec.)	-- \$25,000.00

B. DAMAGE TO DWELLING OF FOSTER PARENT

For Catastrophic Loss(es) only	-- \$100,000.00
Limit for Calendar Year	-- \$100,000.00

C. LIABILITY FOR THIRD-PARTY CLAIMS

Secondary Coverage for Any Single Claim	-- \$100,000.00
Limit for Calendar Year (Total)	-- \$300,000.00

The Program shall not make any payments beyond the per claim and per year limitations set forth above.

Under no circumstances will the program under this or any other section, be construed as excess coverage to any other insurance policy purchased and or otherwise available. If the available coverage is less than the limitation(s) specified in this section, the program may make payment to complete the foster parent liability program's liability limits. For example, if a third party claim is valued at \$150,000 and

there is only \$75,000 available in liability coverage, the foster parent liability program's potential exposure is limited to \$25,000.

V. OTHER EXCLUSIONS

In addition to the above limitations and exclusions, the Program shall not provide coverage with respect to the following:

- (1) any act, omission, error or occurrence other than those arising directly out of a foster parent's activities in caring for a foster child in accordance with the foster parent's agreement with CP&P;
- (2) any act, omission, error, occurrence or other conduct by a foster parent in rendering or failing to render professional services for the benefit of the foster child. The ordinary care and services rendered in the role of a foster parent shall not be deemed to constitute professional services for purposes of this paragraph;
- (3) bodily injury and/or property damage or loss occurring away from the premises used as a residence by the foster parent and arising out of the operation or use of any motor vehicle, aircraft, watercraft or any other vehicle of any kind, whether owned or operated by, or rented or loaned to, the foster parent;
- (4) any physical injury to a domestic pet or animal allegedly caused by a foster child;
- (5) any obligation as to which a foster parent or any insurance carrier or any other person or entity may be held liable under any policy of insurance or law, including but not limited to worker's compensation, unemployment compensation, disability benefits, or any similar law;
- (6) any physical injury to a foster parent allegedly caused by a foster child;

- (7) any physical injury to a domestic pet or animal allegedly caused by a foster child;
- (8) any act or omission by the foster parent involving actual fraud, willful, malicious or intentional misconduct, or the commission of a crime by the foster parent;
- (9) damage to property owned or rented by, or loaned to, a foster parent or person residing in the foster parent's household, which is used for business or business pursuit;
- (10) damage to property owned or rented by, or loaned to, a foster parent or person residing in the foster parent's household, except when such damage is directly caused by the foster child;
- (11) damage caused by ordinary wear and tear;
- (12) credit cards and/or their misuse;
- (13) costs, fees and/or expenses incurred through telephone or cable television usage, including pay-per-view and the internet; and
- (14) damage or loss involving cash, coin, collections, collectibles, jewelry, or antique furniture unless specifically listed in a rider to the foster parent's homeowner's/tenants's insurance policy.

VI. FOSTER PARENT RESPONSIBILITIES

A. COMPLIANCE WITH PROGRAM

A foster parent submitting a claim under the Program shall comply with all of the provisions, requirements and time limitations set forth in this contract, including in the sections of the Program captioned, "FILING A CLAIM UNDER THE PROGRAM," "DISPUTES UNDER THE PROGRAM," and "SUBROGATION," infra.

B. DUTY OF COOPERATION

A foster parent submitting a claim under the Program shall cooperate fully with CP&P and the Bureau of Risk Management throughout the investigative and claim determination process. Upon request by CP&P or the Bureau of Risk Management, a foster parent submitting a claim under the Program shall provide any and all requested documentation in the foster parent's possession concerning the subject matter of the claim or suit. A lack of good faith on the part of the foster parent may be cause for the denial of a claim under the Program.

C. THIRD-PARTY CLAIMS

In the event that any claim is made or suit is brought by a third party against a foster parent, a foster child, or the State relating to foster care or the Program, the foster parent shall immediately: (1) forward to the State every complaint, notice, summons, subpoena, pleading, amendment, demand or other document received by the foster parent, or by his or her representative; (2) provide, in a timely manner, any and all information, documents and other materials requested by the State; (3) assist the State in securing and giving evidence and obtaining the attendance of witnesses; (4) attend all hearings and trials as may be required; and (5) assist the State in making settlements, in the conduct of suits, and in enforcing any rights of contribution, defense, indemnification, subrogation and/or any other claim of right against any person or entity.

D. OTHER RESPONSIBILITIES

A foster parent shall not, except at his/her own cost, incur any expense, assume any liability or obligation, or make any payment with respect to any claim or suit under the Program, or with respect to any occurrence likely to involve a claim or suit under the Program.

VII. FILING A CLAIM UNDER THE PROGRAM

In the event of a claim or suit under the Program, or any occurrence likely to involve a claim or suit under the Program, the foster parent shall provide written notice to CP&P within 30 days of the occurrence which forms the subject matter of the claim or suit.

Such notice shall consist of the fullest information obtainable concerning the claim or suit and shall contain the name of the foster parent; the name and address of the person(s) or entity (ies) allegedly sustaining injury or damage or loss; the name and address of any eyewitness(es); the name and address of any person(s) having relevant information concerning the claim; a complete description of the occurrence, including time, date, location and circumstances surrounding the occurrence; and any materials, including receipts, photographs, estimates, affidavits, eyewitness statements and other documentation, to support the validity and value of the claim.

VIII. CLAIMS DETERMINATION PROCESS

Upon receiving notice of a claim under the Program from a foster parent in the form specified above (See "FILING A CLAIM UNDER THE PROGRAM", supra), CP&P shall review the information provided by the foster parent and make a recommendation as to whether the claim should be granted or denied. CP&P shall promptly forward its recommendation, along with the foster parent's claim and all relevant supporting documentation, to the Bureau of Risk Management for determination.

If payment and/or legal representation is denied by the Bureau of Risk Management, the foster parent submitting a claim under the Program shall be provided with a statement of reason(s).

IX. DISPUTES UNDER THE PROGRAM

If a foster parent submitting a claim under the Program disagrees with the determination reached by the Bureau of Risk Management, the foster parent or his/her representative shall have the opportunity to file a written application with the Attorney General or the Attorney General's designee within fifteen (15) days of the issuance of the statement of reason(s).

Such application shall include a complete description of the foster parent's version of events, along with copies of any relevant materials and documentation to support the foster parent's claim, and a copy of the statement of reason(s). A decision with respect to the application shall be issued by the Attorney General or the Attorney General's designee.

X. CONDUCT OF LITIGATION

The Attorney General or the Attorney General's designee shall have exclusive control over any litigation as to which representation is provided under the Program.

Whenever legal representation is to be provided to a foster parent under the Program, the Attorney General or the Attorney General's designee, in his or her sole discretion, may provide representation by a member of the Attorney General's staff or by retaining a private attorney.

XI. SUBROGATION

The Program is intended to be consistent with the statutes and laws of the State of New Jersey. Any term of the Program which appears to be in conflict with any provision of any applicable law shall be construed, to the extent permitted, as consistent with such law. To the extent that no such construction is possible, the terms of the Program are hereby amended to conform to governing law.